

## **STATE WATER CONTROL BOARD ENFORCEMENT ACTION**

### **SPECIAL ORDER BY CONSENT WITH ECOLOCHEM, INC. Permit No. VA0053554**

#### **SECTION A: Purpose**

This is a Consent Special Order issued under the authority of §62.1-44.15(8a) and §62.1-44.15(8d) of the Code of Virginia, between the State Water Control Board and Ecolochem, Inc., for the purpose of resolving certain violations of environmental law and/or regulations.

#### **SECTION B: Definitions**

Unless the context clearly indicates otherwise, the following words and terms have the meaning assigned to them below:

1. “Code” means the Code of Virginia (1950), as amended.
2. “Board” means the State Water Control Board, a permanent citizens’ board of the Commonwealth of Virginia as described in the Code §§ 10.1-1184 and 62.1-44.7.
3. “Department” or “DEQ” means the Department of Environmental Quality, an agency of the Commonwealth of Virginia as described in the Code § 10.1-1183.
4. “Director” means the Director of the Department of Environmental Quality.
5. “Order” means this document, also known as a Consent Special Order.
6. “Ecolochem” means Ecolochem, Inc., a corporation certified to do business in Virginia and its affiliates, partners, subsidiaries, and parents.
7. “TRO” means the Tidewater Regional Office of DEQ, located in Virginia Beach, Virginia.
8. “Regulations” means 9 VAC 25-31-10 *et seq.* - Virginia Pollutant Discharge Elimination System (VPDES) Permit Regulation.
9. “Permit,” means VPDES Permit No. VA0053554.

## **SECTION C: Findings of Fact and Conclusions of Law**

1. Ecolochem owns and operates a facility that regenerates ion exchange resin used in the process of demineralization of water supplies for industrial applications. Ecolochem is located in Norfolk, Virginia and is the subject of the Permit, which became effective October 27, 1998 and expires October 27, 2003. The Permit authorizes Ecolochem to discharge, in accordance with the effluent limitations, wastewater to Broad Creek, a tributary to the Eastern Branch of the Elizabeth River.
2. §62.1-44.5.A of the Code, §9 VAC 25-31-50.A.1 of the Regulations and Part II. F.1 of the Permit states "Except in compliance with a permit...issued by the Board, it shall be unlawful for any person to discharge into state waters sewage, industrial wastes, other wastes, or any noxious or deleterious substances."
3. Part I. A of the Permit requires Ecolochem to comply with a Whole Effluent Toxicity (WET) effluent limitation of 1.0 TU<sub>a</sub>. In December 2001 and February 2002, Ecolochem reported 1.44 TU<sub>a</sub> and 1.5 TU<sub>a</sub>, respectively. Ecolochem submitted a study with evidence indicating little or no harm is caused to the receiving stream when WET levels exceed Ecolochem's permit effluent limits by a factor of three. The evidence shows that environmental harm decreases dramatically when other factors such as mixing zones and the current condition of the receiving stream are included when determining the effect of WET on the environment. The study supports the use of an alternate conversion factor in the calculation of the WET limit; Ecolochem is currently discussing this issue with EPA.
4. On June 12, 2002, TRO issued Ecolochem Notice of Violation No. W2002-06-T-0001 for exceeding the WET permit limits established by the Permit.
5. Ecolochem, Inc. implemented corrective actions which includes the following: (1) recalibrating the sensor in December 2001; (2) purchasing and utilizing a new calibration standard of 15,000 mg/L instead of the 30,000 mg/L calibration standard; (3) purchased and installed a new relay computer in February 2002; (4) increased the frequency of checking the calibration standard to once per week; (5) monitoring TDS continuously; and (6) acquiring a new improved sensor, which is less susceptible to fouling by suspended solids.

## **SECTION D: Agreement and Order**

Accordingly, the Board, by virtue of the authority granted it in Va. Code § 62.1-44.15(8a) and (8d), orders Ecolochem, and Ecolochem voluntarily agrees, to pay a civil charge of \$1,000 within 30 days of the effective date of the Order in settlement of the violations cited in this Order. Payment shall include Ecolochem's Federal Identification Number. Payment shall be made by check, certified check, money order, or cashier's check payable to the "Treasurer, Commonwealth of Virginia," delivered to:

Receipts Control  
Department of Environmental Quality  
Post Office Box 10150  
Richmond, Virginia 23240

## **SECTION E: Administrative Provisions**

1. The Board may modify, rewrite, or amend the Order with the consent of Ecolochem, for good cause shown by Ecolochem, or on its own motion after notice and opportunity to be heard.
2. This Order only addresses and resolves those violations specifically identified herein, including those matters addressed in the Notice of Violation issued to Ecolochem by DEQ on June 12, 2002. This Order shall not preclude the Board or the Director from taking any action authorized by law, including but not limited to: (1) taking any action authorized by law regarding any additional, subsequent, or subsequently discovered violations; (2) seeking subsequent remediation of the facility as may be authorized by law; or (3) taking subsequent action to enforce the Order. This Order shall not preclude appropriate enforcement actions by other federal, state, or local regulatory authorities for matters not addressed herein.
3. For purposes of this Order and subsequent actions with respect to this Order, Ecolochem admits the jurisdictional allegations, factual findings, and conclusions of law contained herein.
4. Ecolochem consents to venue in the Circuit Court of the City of Richmond for any civil action taken to enforce the terms of this Order.
5. Ecolochem declares it has received fair and due process under the Administrative Process Act, Va. Code §§2.2 - 4000 *et seq.*, and the State Water Control Law and it waives the right to any hearing or other administrative proceeding authorized or required by law or regulation, and to any judicial review of any issue of fact or law contained herein. Nothing herein shall be construed as a waiver of the right to any administrative proceeding for, or to judicial review of, any action taken by the Board to enforce this Order.
6. Failure by Ecolochem to comply with any of the terms of this Order shall constitute a violation of an order of the Board. Nothing herein shall waive the initiation of appropriate enforcement actions or the issuance of additional orders as appropriate by the Board or the Director as a result of such violations. Nothing herein shall affect appropriate enforcement actions by any other federal, state, or local regulatory authority.
7. If any provision of this Order is found unenforceable for any reason, the remainder of the Order shall remain in full force and effect.
8. Ecolochem shall be responsible for failure to comply with any of the terms and conditions of this Order unless compliance is made impossible by earthquake, flood, other acts of God, war, strike, or such other occurrence. Ecolochem shall show that such circumstances were beyond its control and not due to a lack of good faith or diligence on its part. Ecolochem shall notify the DEQ Regional Director in writing when circumstances are anticipated to occur, are occurring, or have occurred that may delay compliance or cause noncompliance with any requirement of the Order. Such notice shall set forth:
  - a. the reasons for the delay or noncompliance;
  - b. the projected duration of any such delay or noncompliance;
  - c. the measures taken and to be taken to prevent or minimize such delay or noncompliance; and
  - d. the timetable by which such measures will be implemented and the date full compliance will be achieved.

Failure to so notify the Regional Director within 24 hours of learning of any

condition above, which Ecolochem intends to assert will result in the impossibility of compliance, shall constitute a waiver of any claim to inability to comply with a requirement of this Order.

9. This Order is binding on Ecolochem, its successors in interest, designees and assigns, jointly and severally.
10. This Order shall become effective upon execution by both the Director or his designee and Ecolochem. Notwithstanding the foregoing, Ecolochem agrees to be bound by any compliance date, which precedes the effective date of this Order.
11. This Order shall continue in effect until Ecolochem petitions the Director or his designee to terminate the Order after it has completed all of the requirements of the Order and the Director or his designee approves the termination of the Order.
12. By its signature below, Ecolochem voluntarily agrees to the issuance of this Order.

And it is so ORDERED this day of \_\_\_\_\_, 2002.

\_\_\_\_\_  
Robert G. Burnley, Director  
Department of Environmental Quality

Ecolochem voluntarily agrees to the issuance of this Order.

By: \_\_\_\_\_

Date: \_\_\_\_\_

Commonwealth of Virginia

City/County of Norfolk, VA

The foregoing document was signed and acknowledged before me this \_\_\_\_\_ day of \_\_\_\_\_, 2002, by \_\_\_\_\_, who is  
(name)

\_\_\_\_\_ of Ecolochem, on behalf of the Corporation.  
(title)

\_\_\_\_\_  
Notary Public

My commission expires: \_\_\_\_\_.